Application No. 09/740,804
Filing Date: 12/21/2000
Attorney Docket No.: O226

Examiner: NGUYEN, Thanh T.
Art Unit: 2444
Confirmation No.: 6420

Remarks

This communication is responsive to the Final Office Action of **May 18, 2010.**
Reexamination and reconsideration of the claims is respectfully requested.

Status of Claims

Claims pending for examination: 1-13, 15, and 19-36

Claims previously canceled: 14, 16-18

Claims in independent form: 1, 15, 19, 20 and 26-29

Summary of The Office Action

Claims 1, 3-14, 15-27 and 29-35 were rejected under 35 USC §103(a) as
purportedly being unpatentable over Pruthi et al. (US Patent Application Publication
No. 2002/0105911)(Pruthi), in view of Sweet et al. (Publication No. US
2003/0115266 A1)(Sweet).

Claims 2, 28 and 36 were rejected under 35 USC §103(a) as purportedly
being unpatentable over Pruthi in view of Colby et al. (US Patent No.
6,449,647)(Colby) and further in view of Sweet.

Withdrawal of Final Rejection

A Petition to the Director has been filed on July 21, 2010 to withdraw the final rejection. Applicant requests that the final rejection be withdrawn for the reasons set forth in the petition. Therefore the present amendments should be entered and a new non-final office action should be issued.

Furthermore since the Patent Office did not respond to applicant's last response for over five (5) years even after numerous status inquiries and petitions were sent, it is unjust to make the next action final.

Additionally, a number of rejections did not rebut or comment on applicant's previous arguments. This is non-responsive. Rather, the rejections were simply conclusory citations with no explanation and were cut-and-pasted from the previous office action. This is improper and thus the final rejection is unwarranted.

Independent Claim 1

Claim 1 has been amended to recite additional elements. The references fail to teach or suggest the elements as claimed. Claim 1 should now be allowed.

Obviousness Rationale is not comprehensible, thus improper

The rationale provided as to why it would be obvious to combine Pruthi and Sweet includes such poor grammar that it is incomprehensible (Final OA, page 3, item 7). It is not the Applicant's burden or duty to decipher sentences that do not comply with rules of English grammar. The rationale provided makes no sense and thus cannot be the basis for a proper prima facie rejection.

Dependent Claim 12

Claim 12 recites that the monitoring steps "are performed on a subscription basis." The examiner states that "selecting a hyperlink is interpreted as subscribing

to access monitoring data" (OA, page 5, item 17). First, the claim does not recite "accessing monitoring data" thus the reasoning is not applicable.

Second, the action of selecting a hyperlink does not teach or suggest monitoring on a subscription basis. There is no correlation between the two functions what so ever. There is no evidence or other facts in the reference that suggests that selecting a hyperlink teaches the subscription of monitoring. Therefore, the examiner's interpretation is fabricated, is not consistent with the specification, is unreasonable, and is improper. The rejection should be withdrawn.

Independent Claim 15

Claim 15 has been amended to recite, "after receiving a subscription payment". The references fail to teach or suggest a monitoring function as claimed. Claim 15 should now be allowed.

Independent Claim 19

Claim 19 recites:

using an IP Header sequence number to help distinguish out-of-order TCP packets <u>from retransmitted TCP data packets</u>

The cited text of Pruthi [0047] fails to discuss anything about retransmitted data packets. Therefore the claimed elements are not found and a prima facie rejection has not been established.

Since only a paragraph citation was provided with no explanation, applicant has no way of determining what the examiner was thinking. The conclusory rejection is improper (MPEP 2142).

Independent claim 26

The rejection of claim 26 is a conclusory rejection that only provides a citation to a few paragraphs in Pruthi (Final OA, page 7, section 32). No rationale was provided. The rejection is the exact same rejection as in the previous office action. It was simply cut-and-pasted.

Applicant points out that the previous rejection of claim 26 was rebutted by the applicant in the last response and an explanation was provided. Yet, the examiner has failed to provide any comments or rebuttal. The rejection is thus non-responsive and improper.

Independent Claim 27

Claim 27 recites:

using an HTTP initial request and reply to determine if the content of at least one web page hosted by the web server is static or dynamic.

The OA cites Pruthi paragraphs [0122-0131] (OA page 8, section 33). No explanation or reasoning was provided. This is improper under MPEP 2142 and by the U.S. Supreme Court (*KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007)).

Furthermore, neither the term "static" nor "dynamic" appear in the cited text. Also, the terms "page" or "web page" do not appear anywhere in Pruthi. Therefore, it is impossible for the cited text to teach or suggest determining "if the content of at least one web page hosted by the web server is static or dynamic" as recited in the claim. A prima facie rejection has not been established and the rejection should be withdrawn. Claim 27 should be allowed.

Dependent Claim 35

Claim 35 depends from independent claim 34 and recites the function that is similar to claim 27, "using an HTTP initial request and reply to determine if the content of at least one web page hosted by the web server static or dynamic."

The FOA makes a conclusory citation to Pruthi [0134] (OA, page 10, section 42). No explanation is given. Pruthi [0134] is completely irrelevant and discusses nothing in common with the claimed elements. As stated under claim 27, neither the term "static" nor "dynamic" appear in the cited text. Also, the terms "page" or "web page" do not appear anywhere in Pruthi. Therefore, it is impossible for the cited text to teach or suggest the claimed elements.

The rejection is without merit, is improper, and should be withdrawn. Claim 35 should now be allowed.

Independent Claim 28 – not reviewed by the examiner

In the previous office action (dated May 20, 2004), claim 28 was rejected based on Colby with the citation that read as follows "See Column 7 Lines 17-2" (see previous OA, page 9, section 42).

It is quite apparent that the citation has a typographical error because line numbers do not decrease from 17 to 2. Interestingly, the present office action includes the exact same citation with the exact same typographical error (Final OA, page 11, section 45).

Additionally, claim 28 was previously amended with the feature of, "calculating a plurality of different components..." This element was not addressed in the Final OA.

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Clearly, the examiner <u>did not review the claim</u> or the previous rejections. The examiner simply cut-and-pasted the previous rejection without any further consideration. Once again, this is an improper rejection.

Claim 28 recites, "discounting at least one retransmitted HTTP Get or HTTP Post request from said client as web server processing time." There is nothing in the cited text of Colby that discusses such a discounting function. Since the examiner has not provided any response or reasoning, there is no way of knowing what the examiner was thinking. The element is not found and a prima facie rejection has not been established. The rejection is improper and should be withdrawn.

Conclusion

For the reasons set forth above, the claims are now in condition for allowance. An early allowance of the claims is earnestly solicited.

Respectfully submitted,

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